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ONTARIO SECURITIES COMMISSION
Volume 1, Issue 4

PERSPECTIVES

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inside...

FEATURE

David Brown on the OSC's New Directions

On November 1, 1997, the OSC was converted to an independent, self-funded Crown Corporation. This means that we became a corporate entity with statutory powers and responsibilities. We can set our own budgets, hire our own personnel, determine our own priorities, with the confidence that, within reason, funding will be available.

Priorities

Our priorities will be to beef up our activities substantially in the areas of enforcement and compliance and to harmonize these activities with securities regulators in other jurisdictions and indeed with the regulators of financial services in general; to ensure that similar financial services and products are regulated in a similar manner regardless of which regulator or SRO is the primary regulator.

So, having given you my vision of the OSC as a robust regulatory organization, what are the issues on our radar screen?

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POLICY PROFILES

An overview of policy initiatives and where they stand in the policy development and implementation process.

Proposed Changes to Mutual Fund Prospectus Disclosure

To improve the clarity and quality of mutual fund prospectus disclosure, the Canadian Securities Administrators (CSA) have proposed a new National Rule.

At present, mutual funds must provide investors with a simplified prospectus that contains important information about the funds, plus a more detailed Annual Information Form upon request. However, many prospectuses are lengthy and difficult to read, and they vary widely in quality and content.

Under the new system, investors would receive a short and readable fund summary instead of the Simplified Prospectus, and could refer to a detailed fund prospectus and current financial statements for more information.

The fund summary would include:

- Standardized performance information;
- Selected financial highlights instead of full financial statements;
- Examples of the impact on an investor's return of mutual fund purchase costs and fees; and
- A catalogue approach showing all important information about each fund on consecutive pages.

In addition, the summaries would be written in plain language, following the same order of disclosure and the same headings. No additional information could be provided in fund summaries, other than specific educational information. This would ensure that key information would not be obscured by irrelevant data.

"The fund summaries would be written in plain language, following the same order of disclosure and the same headings."

The comment period on the proposal ended October 31. Following any further comment period for any material changes made to the Rule, the Ontario Securities Commission (OSC) must deliver the proposed Rule to the Minister of Finance for a 60-day review and decision. If approved, the Rule will go into effect 15 days after approval by the Minister or on a specified date. The CSA propose that the Rule be made effective July 1, 1999.

For more information, please call **Rebecca Cowdery**, Manager, Market Operations, (416) 593-8129, or **Winfield Liu**, Senior Legal Counsel, Market Operations, (416) 593-8250.

Proposed Mandatory SRO Membership Rules

The OSC has published proposed changes to the proposed rules on Self-Regulatory Organization (SRO) Membership for Mutual Fund Dealers and Securities Dealers and Brokers (Rules 31-506 and 31-507).

Proposed Rule 31-506 requires all mutual fund dealers to become members of an SRO recognized by the Commission. The proposed changes to the Rule would tie the effective date to the date the newly established SRO (the Mutual Fund Dealers Association) is recognized by the OSC. In addition, the effective date for current registrants would be linked to the next date the registrant is required to file financial statements under the *Securities Act*, rather than the registration renewal date.

Proposed Rule 31-507 requires all securities dealers and brokers to be members of an SRO self-regulatory body or stock exchange recognized by the Commission. The proposed changes to the Rule would require brokers that are members of The Toronto Stock Exchange, to become members of the Investment Dealers Association of Canada, which currently is the only SRO recognized by the Commission that carries on general member regulation activities. In addition, the effective date for current registrants would be linked to the next date the registrant is required to file financial statements under the *Securities Act*, rather than the registration renewal date.

For more information, please call **Tanis MacLaren**, Associate General Counsel, (416) 593-8259.

21 OSCB June 19, 1998 page 3875

Permanent Registration Proposed

In order to reduce the administrative burden on registrants the CSA has proposed creating a permanent registration system.

The system would require a registrant to provide the same information that is currently filed to allow the OSC to ensure that continued registration is appropriate, and to help calculate annual fees. However, under the proposed Rule, these materials, the financial statements and the fees would be filed at the same time rather than on three separate dates, as is currently required.

The proposed Rule also would result in any individual registrant's registration being suspended when he or she ceases to be employed by a registered firm or when the firm is suspended. Currently, this applies only to salespersons, while officers' registrations are terminated when they leave the firm and a new registration application is required upon employment with a new firm. An individual's registration may be reinstated once he or she becomes employed by a new firm, or when the firm's license is reinstated. The current two year period during which a suspended license may be reinstated would be shortened to 90 days.

For more information, please call **Registration**, (416) 593-8269.

21 OSCB June 26, 1998 page 4067

Proposed Proficiency Rule

A proposed Rule on Proficiency Requirements for Registrants (Rule 31-502) updates proficiency requirements for a number of participants in the securities industry. For example, it codifies the OSC's practices of accepting certain alternative courses and industry experience for dealers and advisers. It also adopts several of the requirements of the Investment Dealers Association of Canada (IDA) and applies these higher standards to securities dealers.

The OSC has now proposed a number of changes to the proposed Rule. These include:

- Requiring compliance officers to be registered, and thus to have completed the Canadian Securities Course;
- Recognizing the Branch Compliance Officer Course conducted by the Institute of Canadian Bankers for the registration of a mutual fund branch manager;
- Permitting registration for salespersons of brokers and dealers restricted to the sales of mutual fund securities with the same proficiency as mutual fund salespersons;
- Updating the names of course materials;
- Amending the proficiency requirements to reflect current IDA requirements; and
- Establishing time limits during which course and experience proficiencies remain valid for applicants who have been out of the industry.

For more information, please call **Registration,** (416) 593-8269.

21 OSCB August 21, 1998 page 5306

Trades to Employees, Executives and Consultants

As part of the OSC's ongoing rule reformation process, the Commission proposed a new rule for Trades to Employees, Executives and Consultants (rule 45-503), to allow companies to issue stock to employees, executives and consultants without approval by the OSC, under certain conditions. The Rule would incorporate exemptions not covered by current regulations but usually granted in practice.

As a result of comments and further deliberations, the OSC has proposed changes to the proposed Rule. The revised proposed Rule was published on August 21, 1998 (21 OSCB 5268) and then made final on October 6, 1998 (21 OSCB 6569). It is anticipated that the Rule will come into force on December 22, 1998.

For more information, please call **Cynthia Rogers**, Senior Legal Counsel, Market Operations, (416) 593-8261.

Beneficial Securityholder Communication

After receiving a broad range of comments on its proposed National Instrument 54-101 on Communication with Beneficial Owners of Securities of a Reporting Issuer, the CSA have published a number of proposed changes (see *Perspectives*, Spring 1998).

The proposed changes include:

- Redefining the "non-objecting beneficial owner list" to include both an electronic and non-electronic form of the list, instead of just an electronic one.
- Deleting the minimum notice period of eight business days before the record date for notice for a reporting issuer to send a notification of meeting and record dates.
- Deleting the minimum period of five business days before the record date for notice for sending a request for beneficial ownership information to proximate intermediaries.
- Permitting a reporting issuer to override the election of security holders not to receive certain materials.
- Expanding the definition of routine business.
- Amending the fee arrangements so that reporting issuers pay the cost of distribution of securityholder materials to Objecting Beneficial Owners (OBOs) only for distributions to OBOs that declined to receive materials.
- Deleting the section requiring a person or company requesting voting instructions from a beneficial owner to ensure there is no cost to the owner.
- Providing more generous transitional provisions.

For more information, please call **Robert F. Kohl**, Senior Legal Counsel, Market Operations, (416) 593-8233.

21 OSCB July 17, 1998 page 4491

Multijurisdictional Disclosure System

National Instrument 71-101 on the Multijurisdictional Disclosure System (MJDS) came into force in Ontario on November 1, 1998.

The National Instrument, Companion Policy, Rule and Form reformulate the MJDS implemented in 1991 by the CSA and the Securities and Exchange Commission (SEC). The aim of the MJDS is to reduce duplicative regulation in cross-border offerings, issuer bids, takeover bids, business combinations and continuous disclosure and other filings.

The National Instrument is expected to be adopted in all other CSA jurisdictions.

For more information, please call **Randee Pavalow**, Manager, Market Operations, (416) 593-8257.

21 OSCB August 14, 1998 page 5099

OSC REPORTS

An inside look at Commission developments and projects that will have an impact on the investment community.

OSC Proposes Amendments to *Securities Act*

The OSC has proposed changes to both the *Securities Act* and the *Commodity Futures Act* as candidate items to be included in a proposed Fall 1998 Red Tape Bill.

Red Tape legislation aims to eliminate obsolete provisions, increase government efficiency, improve customer service and facilitate harmonization with other jurisdictions. The changes proposed to the *Securities Act* were selected to meet these criteria or are technical in nature.

Most of the proposed amendments to the *Commodity Futures Act* seek to update that Act by incorporating the changes that have been made to the Securities Act since 1994, such as those relating to self-regulatory organizations, enforcement and rule-making.

For more information, please call **Tanis MacLaren**, Associate General Counsel, (416) 593-8259, **Margo Paul**, Senior Legal Counsel, Market Operations, (416) 593-8136, or **Tracey Stern**, Legal Counsel, Market Operations, (416) 593-8167.

21 OSCB August 14, 1998 page 5149

New General Counsel Named

The OSC announced that Susan Wolburgh-Jenah will assume the role of General Counsel when Cathy Singer leaves at the end of her secondment in December. Susan has been with the Commission for 15 years and has held positions in the Commodities Futures Branch, the Legal Advisor's Office, Corporate Finance and most recently as Manager of Filings Team One in the Market Operations Branch.

Dialogue with the OSC

The OSC held its fourth annual conference at the Westin Harbour Castle Conference Centre in Toronto on November 3, 1998. Approximately 300 industry participants and media attended the conference. OSC staff addressed a number of priorities, including investment funds regulatory reform, registrant regulation, electronic trading, the Internet and market fragmentation, enforcement, mutual reliance among Canadian securities regulators, the secondary market, investor education and the Year 2000.

If you were unable to attend the conference, a conference binder containing remarks and material submitted by speakers may be purchased for $80 from the Ellis Riley Group at (416) 593-7352.

Update on Year 2000 Initiatives

On October 21, the CSA hosted an industry-wide conference on the Year 2000 in Toronto. Over 300 professionals attended. Presentations were made by the CSA and the Canadian Exchanges, as well as industry groups.

Among the subjects covered at the conference were:

National Instrument 33-106: Year 2000 Preparation Reporting (the "National Instrument") was made by the OSC and came into force in Ontario on October 16, 1998. The substance and purpose of the National Instrument are to impose requirements on registered firms to file information with the regulator relating to their preparations for the Year 2000 Problem. A "Year 2000 Problem" is defined in the rule to include any problems arising from any of the following: (a) computer software incorrectly reading the date "01/01/00" as being the year 1900 or another incorrect year; (b) computer software incorrectly identifying a date in the year 1999 or any year thereafter; (c) computer software failing to detect that the year 2000 is a leap year; (d) any other computer software error that is directly or indirectly caused by the problems set out in (a), (b) or (c) above. A "registered firm" is a registrant that is registered as a dealer, adviser or underwriter, but does not include an individual.

The rule requires a registered firm to file by October 31, 1998 an initial Year 2000 Survey as to its preparations for the Year 2000 Problem, with information current to September 30, 1998. In addition, a registered firm is required to file on four different dates a Year 2000 Management Certificate as to the progress of its preparations for the Year 2000 Problem.

A registered firm may fulfil its obligations under the National Instrument by filing the required material with a specified self-regulatory organization (SRO) of which it is a member, provided that the SRO notifies the registered firm in writing that the SRO will file the information with the regulator.

Filings are to be made electronically in portable document format (PDF). To assist registrants, both the Year 2000 Survey and the Year 2000 Management Certificate can be downloaded in WordPerfect 6.1 and Word 6.0 formats from the OSC's Year 2000 web site page (at *www.osc.gov.on.ca*). Copies of the filings will be available for public inspection in accordance with Canadian securities legislation and will be posted on the web sites of certain CSA jurisdictions, including the OSC.

The National Instrument was developed by the CSA, in co-operation with the IDA. In addition, the CSA studied new rules of the Securities and Exchange Commission (SEC) requiring broker-dealers, investment advisers and certain transfer agents to file reports disclosing their Year 2000 preparations.

The National Instrument was made under the urgency provision of the *Securities Act*, which allows the Commission to make a rule without the required notice and public comment period. The OSC concluded there was an urgent need for the National Instrument and that without it, there would have been a substantial risk of harm to the integrity of the capital markets.

Infrastructure Participants Y2K Reporting: As one of the objectives of the CSA in addressing the Year 2000 Problem is to identify, monitor and/or assess the Year 2000 remediation efforts of the securities industry as a whole, a group of 31 "key market participants" was identified by the CSA. Key market participants are considered to be crucial links within the Canadian capital markets system. They include the stock exchanges, clearing entities, securities and mutual fund service providers, information providers, CIPF, the Bank of Canada and the Canadian Payments Association (CPA). These key market participants were sent a questionnaire on their Year 2000 preparations. The questionnaire, which requires more detail on Year 2000 preparations than the National Instrument's Survey and Management Certificate, must be filed by November 15, 1998 for information as of September 30, 1998. It is required to be updated and re-filed by January 31, 1999 (for information as of December 31, 1998), by April 30, 1999 (for information as of March 31, 1999) and by July 31, 1999 (for information as of June 30, 1999).

Industry-Wide Testing and Contingency Planning: A cornerstone of the OSC's Year 2000 initiatives will be to ensure that meaningful industry-wide testing and contingency plans are developed by the securities industry. The OSC, on behalf of the CSA, has assumed a leadership role in working with various members of the Canadian subgroup of the G-30 in developing and implementing industry-wide Year 2000 testing planned for June 1999. Separate testing task forces for the securities and mutual fund industries have been meeting regularly to develop the parameters of such testing.

"The OSC and other CSA jurisdictions may consider a rule mandating participation in such industry-wide tests."

The OSC and other CSA jurisdictions may consider a rule mandating participation in such industry-wide tests, and are also considering measures to restrict the participation in the securities markets to those market participants who have satisfied certain testing (eg., point-to-point) and contingency planning requirements.

Reporting Issuers' Year 2000 Disclosure Review Program: The OSC and other CSA jurisdictions recently completed a review of Year 2000 disclosure in continuous disclosure and prospectuses. A CSA joint report on the findings of the review program is expected to be published in the near future.

For more information, please call **Maxime Paré,** Legal Counsel, Market Operations, (416) 593-3650 or **Levi Sankar,** Legal Counsel, Market Operations, (416) 593-8279.

Livent Inc. Cease Trade Order

Effective 12 noon EST on November 20, 1998, the OSC lifted the Cease Trade Order on the securities of Livent Inc., following the filing by Livent of its restated 1996 and 1997 audited financial statements, restated 1996 and 1997 MD&A, and restated Q1 1998 financial statements. Livent also filed its Q2 1998 financial statements.

In addition, Livent issued a news release detailing the nature and the extent of the irregularities initially disclosed on August 10, 1998 and discussion of its current affairs and financial condition.

For more information, please call **Kathy Soden**, Manager, Market Operations (416) 593-8149.

Investment Counsel and Portfolio Managers

The OSC and the SEC issued a joint letter summarizing some violations found as a result of their joint compliance examinations of six selected investment counsel and portfolio managers registered with both regulators.

The letter, published in the OSC Bulletin on August 28, 1998, lists issues in several key areas: duty to disclose; trade allocations; advertising representations to clients; performance; personal trading; advisory agreements; referral arrangements; constructive custody of client assets; and recidivism. The intent of the letter is to educate investment counsel and portfolio managers in order to minimize future violations and to encourage compliance with the Securities Laws.

The OSC Compliance Team will continue performing examinations of investment counsel and portfolio managers, with the goal of reviewing each adviser registered with the OSC at least once every five years.

For more information, please call **Toni Ferrari**, Manager, Market Operations, (416) 593-3692.

21 OSCB August 28, 1998 page 5587

MacKay Task Force on Financial Services Sector

The MacKay Task Force on the Future of the Canadian Financial Services Sector offers 124 recommendations, focusing on four broad themes: enhancing competition and competitiveness; empowering consumers; Canadians' expectations and corporate conduct; and improving the regulatory framework.

Among key individual recommendations were:

- A legislated privacy regime that will assure consumer protection of sensitive personal information;
- A stronger and broader ban on coercive tied selling;
- A dedicated ombudsman for the financial sector;
- Clearer information on fees and commissions;
- Better assurance of basic banking services for low-income Canadians;

- Improving the disclosure given to customers;
- Direct access to the payments system for life insurance companies, mutual funds and investment dealers;
- Permitting banks and trust companies to offer insurance and leasing through branches;
- Allowing foreign banks to operate in Canada through branches and new opportunities for foreign firms to make loans to Canadians;
- New powers for credit unions and credit union centrals, including the power to become or form cooperative banks;
- Making it easier to start new banks;
- Integration of deposit insurance for banks and compensation plans of life insurance companies;
- Strengthening the Office of the Superintendent of Financial Institutions' governance structure and transferring the regulatory responsibilities of the Canada Deposit Insurance Corporation to OSFI.

Many of the Task Force's observations and recommendations reinforce the OSC's views, particularly in the area of empowering consumers and improving the regulatory framework. (see page 9)

The report can be accessed at *finservtaskforce.fin.gc.ca*. For more information, call 1-888-288-8006.

List of Documents Required For Mutual Reliance

Following the publication in June of the proposed National Policy Statement on the Mutual Reliance Review System for Prospectuses and Initial AIFs (NP 43-201), the CSA have issued lists of the material to be filed under the new system.

Some changes to the materials required have been made arising from the filing of documents through SEDAR and changes in legislation and administrative practices.

For more information, please call **Rose Fergusson**, (416) 593-8116.

21 OSCB August 7, 1998 page 4987

Rules Seminars for Securities Lawyers

A series of seminars on the reformulation of Ontario's securities laws, aimed at bringing securities professionals up to speed on the new rules, instruments and policies was organized by legal practitioners in private practice in concert with the OSC and Insight Conferences. The seminars took place over four days in November and December.

For more information, contact **Insight Information Customer Service** at (416) 777-2020.

ENFORCEMENT

The following are summaries of recent enforcement proceedings and hearings before the Commission. For more information, please call the OSC at (416) 593-8314.

Venard Joseph Gaudet Patrick Anthony Chesnutt, Paul Marion Cohen, and Osler Inc.

On July 3, 1998, Venard Joseph Gaudet ("Gaudet"), Patrick Anthony Chesnutt ("Chesnutt"), and Paul Marion Cohen ("Cohen") were each convicted on a total of 105 charges under the *Securities Act*. The charges arose as a result of their conduct when they were the principal shareholders and senior officers of the now defunct brokerage firm, Osler Inc. His Honour Judge Bernard N. Kelly sentenced each of the accused to a period of four years in jail to be served concurrently with the sentences they received from their convictions for offences under the Criminal Code of Canada. Osler Inc. was also found guilty of 105 charges under the *Securities Act* and was fined $25,000 per count for a total of $2,625,000.

In December 1987, The Toronto Stock Exchange was notified by Osler Inc. of its failure to maintain the minimum level of regulatory capital required for the brokerage firm and the Ontario Securities Commission initiated an investigation into the matter. In December 1988, charges were laid under the Provincial Offences Act against five former employees of Osler Inc. and the Commission issued Notices of Hearing in respect of activities at Osler Inc.

The sentencing of Gaudet, Chesnutt and Cohen brought the Enforcement Branch's investigation and prosecution in the Osler matter to an end. The above result not only sets a precedent in terms of the length of the sentence and the amount of the fine, but also sends a very important message about the significance of compliance with the self-reporting rules imposed by securities regulators.

Peter Cunti

(misleading Commission staff (public interest (s.127)))

On August 8, 1998, the Ontario Securities Commission approved a settlement agreement entered into between Peter Cunti and staff of the Commission in respect of allegations that Mr. Cunti deliberately misled them in the course of an investigation.

The investigation concerned the true ownership of a private British Columbia corporation that invested in Rutherford Ventures Corp., which later became Diamond Fields Resources Inc. In the settlement agreement, Mr. Cunti admitted that he had in fact deliberately misled Commission staff, and that his conduct in doing so was contrary to the public interest. Mr. Cunti agreed to, and the Commission imposed, a two-year removal of the trading and other exemptions provided for under the *Securities Act*.

Belteco Holdings Inc., Torvalon Corporation, Gary Salter, Elaine Salter, Peter Arthur Mitchell, Rodika Florika,

Glen Erikson, Christine Erikson, Kai Hoesslin, Harcourt Wilshire, 921159 Ontario Inc., and 918211 Ontario Inc.
(public interest (s. 127))

In a decision released on September 30, 1998, the Ontario Securities Commission concluded that Glen Erikson, Christine Erikson, Peter Mitchell and others, participated in and facilitated a number of serious violations of the Securities Act and knowingly participated in a series of transactions involving the securities of Belteco Holdings Inc. and Torvalon Corporation which were "manipulative, deceptive and unconscionably abusive of the capital markets".

The relevant transactions were found to have been designed to create a number of tradeable shares among a control group. From within the control group, the participants then transferred the shares to two broker-dealers. The broker-dealers, in turn, sold the shares to members of the public at marked-up prices. The "scheme" was described as one "which was clearly designed to place securities in the hands of investors at prices which did not reflect their real value".

The Commission concluded that the activities in question constituted a carefully prepared scheme which was designed to profit the participants, whether or not the speculative businesses of the companies proved to be successful. Further, it was designed to improperly take advantage of every possible exemption available under the *Securities Act* to reduce expenses while at the same time, providing practically no information on the public record as to the likelihood of success of the companies.

The Commission's ruling makes it clear that the Commission will censure registered representatives, securities lawyers, and others, where their actions facilitate an abusive scheme, or otherwise amount to a serious violation of the Securities Act. Further, the Commission's decision makes it clear that a registered salesperson cannot simply accommodate the wishes of clients, but rather is obliged to, at the very least, make inquiries where circumstances call for same.

YBM International Inc.
(Order that trading in securities cease (public interest (s. 127)))

On August 17, 1998, the Commission ordered that the hearing be adjourned *sine die*, not to be brought back unless and until YBM has filed audited financial statements with the Commission. The temporary cease trading order, originally issued on May 13, 1998, remains in effect until the hearing is concluded.

Koman Info-Link Inc., Koman Investment Inc, Koman Investment Inc. (B.V.I.) ("Koman"), Simon Ko, John Ping Sum Lam and Jose Castenda
(Order that trading in securities cease. (public interest (s. 127)))

On September 22, 1998 the Commission issued an order continuing the temporary Cease Trade Order against the respondents in respect of their conduct in the trading of foreign currencies. In a companion order, the Ontario Court (General Division) has ordered a freeze on funds held in certain bank accounts of Koman.

The Temporary Order states that Koman and Koman Investment Inc. established what purports to be a foreign currency trading operation in Toronto, Ontario. It is alleged that Koman or Koman Investment Inc. represented that client funds deposited with the companies were used to acquire foreign currency contracts in any one of six foreign currencies in units equivalent to approximately $100,000 (USD), as well as gold bullion. The Temporary Order states that Koman represented to clients that it purchased a foreign currency contract in the name of the client and that investments were cleared through Koman Investment Inc. based in the British Virgin Islands or other clearing houses or financial institutions located in Hong Kong or Macau. It is alleged that clients of Koman or Koman Investment Inc. did not take delivery of the currency and that all trades were made for speculative purposes on margin.

Robert Thomislav Adzija, Larry Allen Ayres, David Arthur Bending, Marlene Berry, Douglas Cross, Allan Joseph Dorsey, Allan Eizenga, Guy Fangeat, Richard Jules Fangeat, Michael Hersey, George Edward Holmes, Todd Michael Johnston, Michael Thomas, Peter Kennelly, John Douglas Kirby, Ernest Kiss, Arthur Krick, Frank Alan Latam, Brian Lawrence, Luke John McGee, Ron Masschaele, John Newman, Randall Novak, Normand Riopelle, Robert Louis Rizzuto, and Michael Vaughan("the Respondents")
(trading without a prospectus/exemption (s.53))

On October 14, 1998, the Commission extended a Temporary Order against the Respondents which states that they sold to Ontario investors securities in The Saxton Trading Corp., The Saxton Export Corp. and 37 companies known as Saxton Export (II)Corp. through to Saxton Export (XXXVIII)Corp. Staff alleges that the sale of shares of these corporations was a distribution under Ontario securities law and none of the corporations which offered shares filed a prospectus with the Commission and none of the exemptions from the prospectus requirements of Ontario securities law was available to the corporations. Furthermore, staff also alleges that none of the exemptions from the registration requirements of Ontario securities law was available for the sale of shares of the Offering Corporations.

Kipling Investments Ltd.
(Investor Alert)

On July 23, 1998 the Commission issued an "Investor Alert" on Kipling Investments Ltd., purportedly of Toronto. This alert was prompted by numerous inquiries regarding the activities of Kipling Investments Ltd. soliciting by telephone investors in Malaysia, New Zealand, Singapore, Taiwan, Thailand and possibly the Philippines. The alert advised that Kipling Investments Ltd. is not a registrant under the *Securities Act* and cautioned investors to be vigilant when responding to telephone solicitations for securities transactions when dealing with unfamiliar companies.

This marked the first time the Commission had utilized its new Internet web site, *www.osc.gov.on.ca*, to issue such an alert.

CANADIAN SECURITIES ADMINISTRATORS REPORTS

A summary of recent national initiatives from the Canadian Securities Administrators (CSA). The CSA is the organization of the securities regulators of the provinces and territories of Canada.

CSA Summer Meeting

During their summer meeting in Mont-Tremblant, Quebec, the Chairs of the Canadian Securities Administrators reviewed progress on major national policy initiatives.

Key initiatives included:

- Appointing a CSA Year 2000 committee to coordinate initiatives to promote Y2K preparedness in the securities industry (see page 3);
- Requesting staff to develop financial recommendations on alternative trading systems during the summer;
- Directing staff to consider options to clarify the treatment of mutual fund and retirement accounts maintained by securities dealers should a dealer become insolvent.

For more information, please call **Kathy Soden**, Manager, Market Operations, (416) 593-8149.

Canadian Securities Regulatory System

To recognize the enormous strides that the CSA has achieved to harmonize securities administration in Canada, a name to properly describe the system was chosen by the CSA Chairs, the *Canadian Securities Regulatory System*. The CSRS comprises the CSA's Mutual Reliance Review System initiative, the CSA's series of National Instruments and policies and the CSA's harmonization of securities requirements in Canada.

CSA Distribution Structures Committee

The Distribution Structures Committee (the "Committee") was established in 1997 by the Chairs of the Canadian Securities Administrators (the "CSA"). The Committee is made up of staff members from several Commissions and the Chair of the Nova Scotia Securities Commission. The Committee's mandate is to advise the CSA on issues that have arisen due to changes that are occurring in the way that securities firms are structuring themselves for the purposes of distributing securities to the investing public. Consideration is being given to whether the evolution of these structures has created concerns for the integrity and efficacy of the existing regulatory system, and if so, to consider how these concerns can be addressed.

Historically, a dealer marketed and delivered its services through its partners, or its officers and employees. This is the traditional distribution structure with clear reporting lines in place.

"Given the importance placed by securities regulators on principles such as effective supervision, legal responsibility to the client, and access to books and records, these new structures and the resultant increased independence of salespersons give rise to regulatory concerns."

Over the past number of years there has been a widening of the use of new structures such as independent contractors, franchises, and arrangements such as referral fees, and there is pressure from the securities industry to continue to allow the use of non-traditional structures. Given the importance placed by securities regulation on principles such as effective supervision, legal responsibility to the client, and access to books and records, these new structures and the resultant increased independence of salespersons give rise to regulatory concerns.

The Committee is considering whether these alternative structures can replicate the clear lines of responsibility in the traditional employer/employee model and, if they can not, what regulatory response is required to balance the industry's desire for non-traditional structures and the Committee's concerns for investor protection. The Committee is focussing its attention on the implications that the use of these structures has on dealer liability, proper supervision of sales representatives by dealers, dealer capital, insurance and bonding requirements, and record keeping functions. The Committee is considering how, if at all, the regulatory system should be altered.

A Concept Paper canvassing the issues, the regulatory concerns and various possible approaches is being finalized by the Committee. The Paper will be shared with interested groups such as the Mutual Fund Dealers Association, the Canadian Investor Protection Fund, the Investment Dealers Association and the Investment Funds Institute of Canada. Once feedback has been received from these groups and considered by the Committee, the Committee will make its final recommendations to the CSA Chairs.

For more information, please call **Kathy Soden**, Manager, Market Operations, (416) 593-8149, or **Toni Ferrari**, Manager, Market Operations, (416) 593-3692.

Proposed Control Block National Instrument

The Canadian Securities Administrators have proposed three National Instruments (62-101, 62-102, 62-103) based on the Ontario Draft Rule, "The Early Warning System and Related Take-Over Bid, Insider Trading and Control Block Distribution Issues." The National Instruments will regulate essentially the same matters as the Draft Rule, which was published in 1995.

The proposed National Instrument 62-101 on Control Block Distribution Issues has two main purposes:

1) It would set out a limited exemption for eligible institutional investors from the prospectus requirements applicable to control block distributions. The exemption would allow these investors to dispose of securities without being subjected to certain hold periods or disclosure requirements.

2) It would modify the application of hold periods for pledgees disposing of securities that form part of a control block.

The primary purpose of the National Instrument 62-102 on Disclosure of Outstanding Share Data is to ensure reporting issuers provide information to the public of the designation and number or principal amount of their outstanding securities. Reliable disclosure is essential for the purposes of the early warning requirements and the alternative monthly reporting system, contained in proposed National Instrument 62-103.

National Instrument 62-103 – The Early Warning System and Related Take-Over Bid and Insider Reporting Issues modifies the early warning and insider reporting requirements of securities legislation as they apply to passive institutional investors. These investors would be permitted to file reports of their ownership or control of securities of reporting issuers on a less immediate and less frequent basis than other investors. In addition, they would not be required to aggregate all securities owned or controlled by their independent business units.

For more information, please call **Tanis MacLaren**, Associate General Counsel, (416) 593-8259.

21 OSCB September 4, 1998 page 5637

Extension of Testing for National Application System

The CSA have extended testing by law firms of the concept proposal for the National Application System until further notice.

The CSA National Application System Committee has reviewed comments on the concept proposal and reported to the CSA. It is expected a policy for the system, which addressed the comments received and the experience gained through testing, will be published for comment this fall.

For more information, please call **Margo Paul**, Senior Legal Counsel, at (416) 593-8136.

21 OSCB July 3, 1998 page 4163

(OSC's New Directions, continued from cover)

Market Fragmentation and Alternative Trading Systems: The Canadian Context

One of the clear choices is the subject of trading systems which, in Canada, are fragmented and in great danger of becoming even more so. In my view this topic takes on a particular urgency since it is something which the U.S. dealt with over 10 years ago and should have been confronted in Canada long ago.

Electronic trading systems ("ETSs") are screen-based computer systems that automate all or part of the traditional trading process. Over the past decade, the use of ETSs not sponsored by Self Regulatory Organizations ("SROs") ("NETS" – non-SRO sponsored ETSs) has grown significantly in many jurisdictions, particularly in the United States.

On April 23 of this year, a public forum was hosted by the Canadian Securities Administrators ("CSA") to consider this issue. As a result of this work, the CSA have developed a series of proposals for a Canadian ATS system that is currently being discussed with exchanges and other electronic system providers across the country.

Our target is to publish a concept proposal by all CSA members for a Canadian ATS structure sometime this fall.

Changing the Allocation of Regulatory Responsibilities

Also high on our priority list is the need to bring greater efficiencies to the market place. In this respect it is imperative that we come to grips with regulatory overlap, and regulatory gaps. The challenge for us in Canada arises from the division of powers. Securities regulation has been categorized as falling constitutionally under the heading of "property and civil rights in the province", a matter reserved exclusively to the Provinces. Legislative jurisdiction over banks and banking, however, is reserved exclusively to the federal government. Thus the regulatory field is divided along institutional lines, rather than by category of activity or business.

"The split between federal and provincial regulation of financial markets along institutional rather than business or operational lines may no longer be correct."

Unlike the conditions which have traditionally given rise to wholesale regulatory reform, we are fortunate not to be faced with an industry in crisis. Indeed, the existing regulatory structure, shaped largely by market pressures, has enabled our securities industry and capital markets to achieve a size and level of efficiency that, in relative terms, compares well with those prevailing in other mature enterprise economies' capital markets.

As we have witnessed recently, however, there is no room for complacency. The roles of market participants have changed dramatically and the split between federal and provincial regulation of financial markets along institutional rather than business or operational lines may no longer be correct. Despite the dynamic nature of the markets (accelerated by rapid technological development), there has been little concerted effort to evaluate whether the current regulatory structure efficiently achieves its goals.

There is presently a strong case to be made for a new regulatory split which focuses on the activities carried on by financial services players rather than on the entity type. Such a reshuffling of the regulatory deck would permit one type of regulator to focus primarily on prudential concerns while leaving others to concentrate on the regulation of markets and the protection of consumers of financial services.

In The Meantime: The Canadian Securities Regulatory System (CSRS) "Virtual" National Securities Commission

In a regulatory environment such as securities regulation in Canada, featuring as it does 10 separate securities regulators (12 including the two territories), one must be particularly concerned about the potential for regulatory fragmentation of what is, essentially, one capital market.

The CSA have negotiated a Memorandum of Understanding amongst themselves with the intention that the Mutual Reliance Review System will be fully operational in 1999. In the meantime, on a voluntary basis, many filers are using the new system to enable us to test our systems and work out the bugs.

Financial Planning and Advisory Services: The Financial Industry's Changing Focus

The need for accelerating the pace of rationalizing regulatory jurisdictions is highlighted by the changes occurring around the provision of financial planning and advisory services. The financial services industry as a whole is shifting away from its primary role as a provider of financial products and is replacing this source of revenue with advisory services.

In the midst of this sea-change in the approach to financial services, a competitive tension has developed over the issue of accreditation. Providing financial planning services has become an important competitive objective, and each industry group wants to make sure that it can advertise its advisers as the most qualified. No sector wants to assume a greater cost of training financial planners than its competitors, or to meet a higher standard.

These developments have important implications for our regulatory regime. Simply put, our current regime has not kept pace with these industry changes. The high level of investor reliance invited by all who provide financial planning advice must be matched by an equivalent level of responsibility for the quality, transparency and objectivity of that advice. Our regulatory approaches at the Commission, at the SRO level and in other, related, regulatory systems, must ensure that this is the case.

Investment Funds

The distributors of mutual funds are not subject to the same standards as others involved in the sale and distribution of securities. These factors led my predecessor and his colleagues in the CSA to embark on one of the most interesting, and certainly most challenging and controversial, of our initiatives in the mutual funds field. That was to cajole the IDA (the existing securities dealer SRO) and the Investment Funds Institute of Canada (the existing investment funds trade association) into a joint venture to form a new mutual fund dealer's SRO.

Progress is being made. Working committees of the new SRO are formulating rules and designing an investor protection fund. We expect that all mutual fund dealers will be members of a fully-functioning SRO by the end of 1999 or soon thereafter.

Another significant initiative in the investment funds area is the simplification of prospectus disclosure. The CSA is now considering comments received on its new, simplified prospectus system designed to give investors essential information about prospective fund investments in a readable and understandable form (see page 1).

Year 2000 Initiatives

The first of the major policy issues that I wish to highlight is one which should concern all of us and is truly in the "last but not least" category. That is the Year 2000 Problem.

To date the Commission's strategy on the Year 2000 has consisted of three main components: raising awareness, providing guidance, and monitoring the progress of initiatives among market participants. This emphasis must now change.

At this point, the focus of Year 2000 efforts is on testing. Market participants must now move into the testing phase. The Commission is committed to encouraging Year 2000 testing and taking prompt remedial action to deal with any deficiencies revealed through the testing process or otherwise.

New Directions Within the Commission

Our first priority has been to bring our salary structure in line with the market place to protect the strong team of people we already have at the OSC and to enable us to supplement their skills with additional talent. It has already been reported that we intend to increase our staff complement by more than 50% over the next 12 to 18 months.

Many of the resources will be deployed in the Compliance and Enforcement areas of the Commission. On the compliance side we will be focussing particularly on monitoring and enforcing compliance with continuous disclosure obligations of reporting issuers. A team within the Market Operations Branch is being formed with this specific mandate. This heavy emphasis on compliance will inevitably generate more cases for review by the Enforcement Branch. In all, we expect approximately 40 new people with a wide range of skills to be hired in the Enforcement Branch over the next 18 months.

While on the topic of Enforcement, we have requested the Government to grant us additional powers to help us carry out our mandate. In particular, we have asked for the ability to prohibit individuals who have breached securities laws from serving as directors or officers of corporations. We have also requested the power to assess unsuccessful respondents for the costs of investigations and the costs of the hearing process, a power already utilized by the British Columbia and Alberta Securities Commissions.

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Staff of the Commission have also started to make much more use of the interim powers found in Section 127 of the Act in situations where there is prima facie evidence of a breach of securities laws. Two interim cease trading orders have been issued in the past few months and I think you will see much greater resort to these powers where the Commission believes that interim restrictions are necessary to protect the public from ongoing harm during the investigatory and hearing process.

Returning to the subject of resource allocation, we are currently creating a new take-over bid team in which much of the take-over bid expertise of the Commission will be located. We are also reorganizing the Office of the General Counsel and reformulating its mandate to focus more directly on providing legal resources to the Commission Executive and staff.

And in Closing....

It is my hope, when my successor arrives to take up his or her duties several years hence, that he or she will be stepping into an agency which does what it sets out to do; an agency which is renowned as one of the world's preeminent regulators, an agency that creates and aggressively enforces clear and unambiguous rules, an agency seen as effectively protecting investors while ensuring efficient capital markets for compliant users.

Ours is an ambitious agenda but one which is realistic and, I am firmly convinced, is achievable.

Perspectives is published quarterly by the Corporate Relations Branch of the Ontario Securities Commission. *Perspectives* welcomes letters to the editor.

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